

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DAVID MACK

v.

PALISADES COLLECTIONS, LLC, ET AL.

§
§
§
§
§

Case No. 4:11cv343
(Judge Schneider/Judge Mazzant)

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Pending before the Court is Michael J. Scott, P.C. and Michael J. Scott's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Dkt. #14). Having considered the motion, and the response thereto¹, the Court finds that the motion should be denied.

On July 18, 2011, a Clerk's Entry of Default was entered against Michael J. Scott (Dkt. #10). On July 19, 2011, Plaintiff filed a motion for default (Dkt. #11). On July 22, 2011, Michael J. Scott filed his motion to dismiss (Dkt. #14). On August 10, 2011, the Court ordered Michael J. Scott to file a response to the motion for default (Dkt. #19). Michael J. Scott's motion to dismiss is not timely and should be denied. The Court will address the motion for default after the response is filed on or before August 17, 2011.

RECOMMENDATION

It is recommended that Michael J. Scott, P.C. and Michael J. Scott's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted (Dkt. #14) should be DENIED.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.

¹ Plaintiff filed a motion to quash that the Court is treating as a response (Dkt. #21).

§ 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 15th day of August, 2011.


AMOS L. MAZZANT
UNITED STATES MAGISTRATE JUDGE